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Assembly Natural Resources Committee

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November 13, 1997

Lester A. Snow
Executive Director
CALFED Bay-Delta Program
1416 Ninth Street, Suite 1155
Sacramento, CA 95814

Dear Mr. Snow:

Thank you for giving me the opportunity to discuss with you some of my concerns about water transfers in the context of the CALFED program at the Assembly Water, Parks and Wildlife Committee hearing on November 4.

I would like to get further clarification from you on a question I posed concerning the effect the proposed Habitat Conservation Plan (HCP) might have on the environmental review of water transfers under CALFED. During the hearing, you stated that the existence of an HCP would have no effect on NEPA and CEQA compliance. That is somewhat irrelevant, since HCPs pertain to the federal Endangered Species Act (ESA), not NEPA or CEQA. My question was, and is, concerned with ESA compliance.

HCPs propose to create a "no surprises" guarantee for participants. This is an assurance that, should unforeseen circumstances arise that create a threat to an endangered species or its habitat, no additional land, funds, or restrictions on HCP-covered actions would be required from the participant. In order to provide "certainty" to participants, HCPs also are intended to remain in effect for decades.

It is my understanding that your proposed HCP would apply to the entire CALFED program. The area affected by CALFED includes a vast amount of the state's agricultural land. As you know, agricultural land provides significant habitat for a wide range of species, including a number of endangered species. Irrigation canals, levees, and natural streambeds provide additional habitat. These lands and waterways, along with their neighboring communities, are also where the impacts of any CALFED policy that expedites extensive water transfers would be most sharply felt.

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With that in mind, would a drought that seriously increased the demand for water transfers constitute an "unforeseen circumstance"? Would a water transfer in those circumstances that dewatered, fallowed, or otherwise affected agricultural land or other species habitat not be subject to any additional ESA review or mitigation, no matter how extensive the transfer was? Would the existence of an HCP and the "unforeseen circumstances" override the provisions in the state Water Code that expressly forbid any water transfer that creates an unreasonable impact on fish or wildlife?

I am concerned that the combination of a "simplified" CALFED water transfer process and a program-wide HCP could lead to significant impacts on wildlife habitat that would be exempt from ESA review. It is hard for me to imagine how CALFED could create an HCP that could adequately account for circumstances such as drought.

If there is one thing that was made clear by the hearing on transfers, it was that it is an extremely complex subject with implications that extend far beyond the deal between a willing buyer and a willing seller. The waters of California belong to the people of California first and foremost, and are to be used in a way that serves the public interest and the public trust. It is essential that a water transfer policy that carries the potential of converting a public resource into a private commodity be scrutinized as thoroughly as possible before we move forward. The potential consequences to both the natural and the human environment are simply too great to do otherwise.

I look forward to your response.

Sincerely,



Debra Bowen, Chairwoman
Assembly Natural Resources Committee

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